

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5642 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

LALJIBHAI M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner
Shri Digant Joshi, instructed by Shri S.P. Hasurkar,
ADDL. GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 03/03/2000

ORAL JUDGEMENT :

The petitioner has approached by way of this Special Civil Application against the judgement and order dated 30.5.1988, passed by the Additional Chief Secretary, Revenue Department (Appeal), Gujarat State, Ahmedabad, in Revision Application No.SRD/ GHDN/ CON.8/

87, whereby the Secretary (Appeal) was pleased to confirm the order passed by the Deputy Collector dated 1.4.1987 in Fragmentation Case No.992 of 1982.

2. It is the case of the petitioner that the land in question was purchased by him by a registered sale deed dated 23.4.1979 bearing Block No.433, admeasuring 1 acre, 37 gunthas of village Mahundara, Taluka, District Gandhinagar from respondent no.2, Mangalbhai Madhabhai, resident of the same village. It was in the year 1986, the Prant Officer, Gandhinagar issued notice dated 29.7.1986 to the petitioner and also to respondent no.2 to show cause as to why the sale by respondent no.2 in favour of the petitioner be not declared invalid and why fine upto Rs.250/- be not imposed on respondent no.2 and further as to why the petitioner be not evicted and possession be restored to respondent no.2, on the ground that the land sold by respondent no.2 to the petitioner is a fragment and the same is in contravention of the provisions of sec.7 of the Bombay Prevention of Fragmentation & Consolidation of Holding Act, 1947 ("the Act" for brevity). The petitioner had filed his reply before the Deputy Collector (Prant Officer) and the Prant Officer after taking into consideration had come to the conclusion that the land in question was declared as a fragment by entry no.943. The sale of the land in question had taken place by a registered sale deed dated 23.4.1979 and an entry to that effect is made at entry no.1593. Thereafter, by an entry no.2020 dated 5.7.1986 that the said land was declared to be not a fragment. The reason for the same was that there was irrigation on the land in question from tube well of the purchaser himself (petitioner). However, the Deputy Collector came to the conclusion that if on the date of the sale the land in question was a fragment and if it ceased to be a fragment at a subsequent date the sale transaction remains to be in breach of the provisions of the said Act. The Deputy Collector had also observed that the notice under sec.6(2) of the said Act was also served and that the purchaser does not have any land adjacent to the land in question and that at the time of transaction of the sale there was no irrigation on the land in question. Therefore, there is a breach of sec.9 of the Act. Said transaction was declared to be illegal and was cancelled and fine of Rs.250/- was imposed.

3. It is against this order that the Revision Application was filed before the Secretary (Appeals), Revenue Department, Govt. of Gujarat. In the said revision it was contended that the evidence on record is not taken into consideration by the Deputy Collector and

that after the entry made pursuant to sale was approved, after a lapse of 7 years no proceedings can be initiated. The points urged before the Deputy Collector were reiterated before the Secretary (Appeals), saying that the purchaser had purchased the land adjacent to their own land. That the entry regarding the land in question being fragment is already cancelled. Therefore, the order of the Deputy Collector is not proper. The Secretary (Appeals), after taking into consideration the case papers has confirmed the order of the Deputy Collector.

4. The learned counsel, Shri P.J. Vyas for the petitioner has urged before this Court that breach in question is only technical one and it was only on account of not taking appropriate permission before the sale transaction, that the show cause notice was issued and the impugned orders came to be passed. Shri Vyas has also submitted that there is a provision of post facto permission and if that is so the breach alleged against the petitioner is a formal (technical) breach and the same can always be condoned by the concerned authorities. This Court is of the opinion that the question involved in the petition is purely in the nature of disputed question of fact inasmuch as whether the land was a fragment on the date of sale, whether it was irrigated or not, whether the petitioner is/ was having any land adjacent to the land in question are the questions which, this Court cannot examine under writ jurisdiction. However, Shri Vyas, at this stage submits that the petitioner may be permitted to make an application for post facto permission under appropriate provisions of law. This request is reasonable and can be granted because it is always open to the petitioner to file an appropriate application for post facto permission, if that right is available to the petitioner under appropriate provisions of law.

5. In view of the aforesaid discussion, the petition is dismissed. Rule is discharged. Interim relief stands vacated. At this juncture, Shri Vyas prays for continuation of the interim relief granted earlier for a period of three months. With a view to enable the petitioner to make an appropriate application, the interim relief granted earlier, which continued for all this period, to continue for a period of eight weeks from today.

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